HIGH COURT OF DELHI : NEW DELHI

+ WRIT PETITION (C) No. 24018/2005

DATE OF DECISION : 24th September 2007

Abu Basar ..... Petitioner
Through: Mr. Sudhir Nandrajog, Mr. Virender Rawat and Mr. Alok Singh, Advocate.

versus

Railway Board through its Secretary & Ors. ..... Respondents
Through: Ms. Preetika Dwivedi and Ms. Geetanjali Mohan, Ms. Deepa Rai.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. Petitioner has, by way of this petition, impugned the order dated 30.5.2003 passed by the Principal Bench of Central Administrative Tribunal (Tribunal for short) in O.A. No.2072/2002 whereby the original application filed by the petitioner came to be dismissed.

2. Brief facts of the case are that the petitioner was

appointed in North-East Railway division with Respondent No.3 on 16.7.1962 as apprentice mechanical. He was promoted to the post of Charge man w.e.f. 22.7.1964. Petitioner continued to work there till 29.4.1977. Pursuant to advertisement dated 2.4.1976 issued by Respondent No.4 (NCERT)advertising the vacancy to the post of Technical Officer, the petitioner applied for the said post. Petitioner states that his application for the said post was routed through proper channel. On his selection the petitioner resigned from his services with Railways on 18.1.1977 citing personal reasons as the cause for such resignation. As per petitioner, instead of seeking permission to join the NCERT he tendered his resignation in accordance with the advise received by him from the Senior officials, with a view to save time and formalities, since he had to join his new employment within a limited time. He was ultimately relieved on 24.4.1977 and paid an amount of Rs.4663/- as P.F.

3. On 19.1.1989 the petitioner wrote to the NCERT claiming prorata pension for his past service with the Railways. In its letter dated 21.6.1995 the respondent No.3 i.e. the Chief Works Manager (P) of the Railways stated that the liability towards pro-rata pension gratuity is being worked out and the amount would be transferred to NCERT as soon as possible.

Consequently, there was no denial, in principle, of the right of the petitoner to seek pro rata pension. On 5.12.1996 another letter was sent by the respondent No.3 to NCERT informing it of the excess payment of Rs.1300.99 paid to the petitioner and informing it that the said amount would have to be deposited by the petitioner along with interest "*so that his services can be transferred to your department.*"

4. On 15.1.1997, the petitioner deposited Rs.1300.00 with the respondent No.3. A further amount of Rs.35,293.00 was deposited on 27.2.1997 in lieu of Rs.4,663.00 received by the petitioner towards P.F., along with interest thereon. On 24.4.1997 NCERT informed the respondent No.3 of the steps taken in compliance of their instructions and requested for transfer of the money towards pro-rata pension. On 21.10.2000, NCERT sent reminder to the respondent No.3 requesting for immediate action for transfer of pro-rata pension to NCERT as done earlier in the case of another person viz. Mr. D.P. Toor.

5. By letter dated 5.3.2001, the claim of the petitioner was rejected. Petitioner sent a representation against the said decision on 17.6.2001. Thereafter, repeated reminders were sent to the respondent No.3 but to no avail.

6. In this background, the aforesaid Original Application No.2072/2002 was preferred praying for grant of prorata pensionary benefit.

7. The tribunal relying on the decision of the Apex Court in ***Krishan Kumar v. Union of India,*** (1990) 4 SCC 207 concluded that the petitioner failed to exercise the option to avail pro-rata pensionary benefit even though an opportunity had come his way in 1999 vide OM dated 19.10.1999. The tribunal further held that the absorption of the petitioner was not in public interest, he having resigned from service of his own volition for personal reasons. On these grounds the claim of the petitioner was rejected and the OA dismissed.

8. Before us, the petitioner has assailed the order passed by the tribunal in the ground that it has been passed without appreciating the material brought on record, in particular, the communications exchanged between the parties, which shows that petitioners case for grant of pro-rata pension was under consideration even in the year 1995 and upto the year 2000. The petitioner had also deposited the amount received as PF with interest thereon with the respondents. As far as exercising the option to obtain prorata

pensionary benefit was concerned, the same had been exercised by the petitioner way back in November 1988. Therefore, as per the petitioner, the Tribunal was wrong in concluding that the petitioner failed to opt for grant of pro-rata pension even when the time was extended by the OM of 1999.

9. The counsel for the petitioner relies upon ***K.K. Dhir v. Union of India & Ors,*** 135 (2006) DLT 300 (DB) where the entitlement to pro rata pensionary benefit has been upheld by this court to persons who had moved to PSU's of their own volition. This court had held that since the Government had relaxed the various conditions of eligibility for admission to pro-rata pensionary benefit by various OMs by fixing cut off date(s), which have no rational basis, these relaxation would be applicable to all Government servants who had 10 years or more of qualifying service before they moved to PSU's either on transfer/deputation, or of their own volition, whether or not a declaration of their move being in Public Interest existed. He thus, submits that his case is covered on all fours by this decision and the petition ought to be allowed.

10. The respondent No.3, per contra, raised an objection that the resignation of the petitioner does not disclose that he resigned for the purpose of joining NCERT and therefore, it

could not be said that the petitioner applied for the post in NCERT through proper channel. Reliance has been placed on para 6 of an OM dated 29th August 1984 to contend that where an employee had secured employment directly and not through proper channel with proper permission, he was not entitled to pro rata pension for his service with the Government. The same reads as follows:-

> "These orders will be applicable only where the transfer of the employee from one organization to another was/is with the consent of the organization under which he was serving earlier, including cases where the individual ha secured employment directly on his own volition, provided he had applied through proper channel/with proper permission of the administrative authority concerned."

11. As far as the finding of the tribunal on the aspect of making of an application for the grant of said benefit is concerned, we find on record sufficient material to negate the conclusion arrived at by the Tribunal as erroneous. It may be pointed out that the correspondence relied upon by the petitioner, which we have taken note of earlier, has not been denied by the respondent. The entire correspondence clearly indicates that the petitioner had applied way back in the year 1988 and his case for grant of pro rata pension was under

active consideration throughout since 19.1.1988 and up till its ultimate rejection in the year 2001. Hence, there was no need for him to apply afresh in the year 1999.

12. Coming now to the other contention. It is not in dispute that the petitioner applied for the post in NCERT through proper channel. This is evident from para 4 of the counter affidavit of Shri Ratna Banerjee Sr. Personal Officer, Mechanical Workshop, NER, Gorakhpur where she states “However, it is submitted that the petitioner in so applying stated in his letter dated 05.05.1976 that: “I will severe all my connections from Railway if I am selected.”

13. Merely because at the time of tendering his resignation, he stated that his resignation was on personal grounds, it cannot be said that the application was not routed through proper channel. The fact that the Respondent No. 3 forwarded the application of the petitioner to NCERT in itself contains the concurrence or 'No objections' of Respondent No. 3 to the petitioner migrating to NCERT. If, thereafter, to be able to join his services with the new employer within the time limited in the offer of appointments, the petitioner merely stated that he was resigning for personal reasons, that by itself

would not disentitles him for prorata pensionary benefits. One has also to take note of the fact that the petitioner had moved to NCERT in the year 1977 when these notifications were not in existence. To subsequently put conditions about the manner in which the employee should make the move from the Government to the Central PSU, to be eligible to secure pro rata pension, and to make them applicable to past cases would not be reasonable. Such conditions could only have prospective operation. Pension is not a bounty but a valuable right of the employee and is payment for past services rendered by him.

14. The Tribunal thus, erred on both these issues and erroneously dismissed the OA preferred by the Petitioner.

15. This leaves us with the claim of the Petitioner on merits. The apex court in ***Praduman Kumar Jain vs. Union of India & Ors.*** 1994 (4) SLR 439 held that an employee who resigned from Government service to join NTPC was entitled to the grant of pro-rata pensionary benefits. This court has in ***K.K. Dhir (supra)*** held that the effect of various OMs relaxing the eligibility criteria for the grant of pro-rata pensionary benefit has been that all employees who had joined PSU's of their own volition or on deputation basis were entitled to get pro-rata pensionary benefit whether or not, a declaration of their joining the PSU being in Public interest was

made.

16. This court also held that no distinction could be drawn between different employees merely on the basis of their date of resignation from Government service/joining the PSUs and for the purpose of grant of pro-rata pension all employees constituted one class.

17. In our view the ratio of the said case applies fully to this case. Consequentially, we allow this petition and the impugned order dated 30.5.2003 is quashed. The Respondents are hereby directed to grant the benefit of pro-rata pension of the service rendered by the petitioner with N.E. Railways henceforth and pay the arrears of pension to him within three months of passing of this order. If the arrears are not paid within three months, the Petitioner would be entitled to interest @ 6% p.a. thereafter. Parites are left to bear their respective costs.

VIPIN SANGHI, J.

A.K.SIKRI, J.

September 24, 2007
P.K. BABBAR